(3)

c/f 102

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION No. 2115 OF 2004

PETITIONER : Dr. Indra Kumar Som, son of Late M.R. Som, aged 38 years, resident of C.H.C., Charama, District Jagdalpur (C.G.)

P. R. No. 2121/04
Presented by Shri R. R. Shrivastava
Dated 21-7-04

VERSUS

RESPONDENTS:

1. State of Chhattisgarh, through the Secretary, Department of Public Health and Family Welfare and Medical Education, D.K.S. Bhavan, Raipur.
2. The Dean, Pt. Jawahar Lal Nehru Medical College, Raipur.
3. The Director, Health Services, Govt. of Chhattisgarh, D.K.S.Bhawan, Raipur.
4. The Medical Council of India, Aiwan- E Galib Marg, Kotla Road, New Delhi

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22/7/04
Clerk to A.G. Bilaspur

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRITS IN THE NATURE OF MANDAMUS, CERTIORARY AND/OR ORDER(S) AND/OR DIRECTION(S) IN THE NATURE OF WRIT

named

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(DIVISION BENCH)

Writ Petition No.2110 of 2004

Dr. M.K. Suryavanshi and others

- Versus -

State of Chhattisgarh and others

AND

Writ Petition No.2115 of 2004

Dr. Indra Kumar Som

- Versus -

State of Chhattisgarh and others

ORDER FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge

HON'BLE THE CHIEF JUSTICE

Sd/-
Chief Justice

POST FOR ORDER ON 17th AUGUST, 2004

Sd/-
L.C.BHADOO
Judge

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(DIVISION BENCH)

CORAM: -

HON'BLE MR. A.S.V. MOORTHY, C.J.

AND HON'BLE MR. L.C. BHADOO, J.

Writ Petition No.2110 of 2004

Dr. M.K. Suryavanshi and others

- Versus -

State of Chhattisgarh and others

AND

Writ Petition No.2115 of 2004

Dr. Indra Kumar Som

- Versus -

State of Chhattisgarh and others

Present: -

Mr. B.P. Sharma, Advocate:	For the petitioners.
Mr. N.K. Agrawal, Deputy Advocate General:	For the State/respondents No.1, 2 and 3.

O R D E R

(Passed on 17th August, 2004)

The following order of the Court was passed by *Justice L.C. Bhadoo*: -

1. Writ Petition No.2110 of 2004 filed by Dr. M.K. Suryavanshi and others, and Writ Petition No.2115 of 2004 filed by Dr. Indra Kumar Som are relating to the same issue. Therefore they are being disposed of by this common order.

2. The main grievance raised by the petitioners in these writ petitions is that before conducting the counselling on 9th July, 2004, they were not informed that they are in the merit list, therefore they should appear for counselling on 9th July, 2004.

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3. Brief facts leading to filing of these writ petitions are that the State of Chhattisgarh had framed Pre-PG Examination Rules, 2002. As per Rule 6.3, a condition was prescribed that only those candidates will be entitled to appear in the pre-PG examination who had completed two years of rural service by 30th April, of that year. These Rules were challenged in Writ Petition No.1188/2002. This Court by its order dated 10th December, 2002, held that Rule 6.3 of the Pre-PG Examination Rules, 2002, which lays down the condition of two years of rural service as it existed, cannot be sustained on the ground that it amounts to 100% reservation for in-service candidates, leaving no seat for freshers. However, it was further held that it will be open to the Government to make a percentage of seats for in-service candidates and for freshers that is institutional candidates. Thereafter, in this year i.e. 2004, new rules namely, Pre-PG Examination Rules, 2004, were framed and as per these Rules even freshers who had just passed Final MBBS examination became eligible to appear in the pre-PG examination. The said Rules, 2004 were also challenged in Writ Petition Nos.1648/2004 and 1326/2004 on the ground that as per Rule 6.3 framed under the Chhattisgarh Chikitsa Mahavidyalayon Ke Snatkottar Pathyakramon Mein Pravesh Adhiniyam, 2002, the eligibility criteria for appearing in the pre-PG examination was completion of two years rural service in a Primary Health Centre on or before 30th April of the year of pre-PG examination, whereas in the Pre-PG Examination Rules, 2004, the said condition has been deleted, thereby even freshers became eligible to appear in the pre-PG examination. The State Government has not made any special provision of reservation for the candidates who had served in the rural areas relying on the earlier rules i.e. Pre-PG Examination Rules, 2002. The State authorities ought to have given precedence to the petitioners or similarly situated persons by giving a percentage of seats. The petitioners relying on the earlier rules altered their position to their detriment and by not fixing a percentage in the seats, the State Government has marred the prospects of the petitioners of getting admission in PG course after appearing in the Pre-PG Examination 2004. These petitions were allowed by this Court vide order dated 2nd July, 2004, it was directed that respondents No.1 to 3 shall give weightage maximum up to 5% to those candidates who had already completed two years of rural service before appearing in the Pre-PG Examination, 2004, after giving the weightage conduct

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counselling afresh after seeking fresh choice of the candidates regarding the session and subject. It was further directed that the counselling should start by 9th July, 2004, which should end by 10th July, 2004 and the session should start from 12th July, 2004. In pursuance of the said order, the State Government vide order dated 3rd July, 2004, fixed 5% weightage for those candidates who had completed two years of rural service before appearing in the examination and as a result of which a fresh merit list was prepared after adding 10 marks and fresh counselling was conducted on 9.7.2004.

4. The petitioners' case is that they were not aware of the order dated 2nd July, 2004 of this Court, as they were not properly connected with print media as they are rendering their services in the most backward and naxalite affected areas of the State of Chhattisgarh. However, the respondents prepared a fresh merit list as per the Court's direction giving weightage of 10 marks to each candidate who had worked in the rural areas. As per the fresh list, the petitioners became qualified for admission in the PG courses because of the said additional marks. But they had no knowledge of their securing position in the merit list. After preparing the merit list, the same was published only on the notice board of Pt. Jawaharlal Nehru Memorial Medical College, Raipur, it was not published in any of the Hindi dailies of the State of Chhattisgarh, therefore, there is no question of petitioners coming to know about their securing position in the merit list. Earlier practice was that the persons who had qualified for admission in the PG courses were being given intimation by writing letters issued by the Director, Medical Education, State of Chhattisgarh. Since the respondents had not given any intimation to the petitioners about their merit, therefore they could not appear on the date of counselling as fixed by the Court and immediately after coming to know about the counselling already held on 9th July, 2004, the petitioners made an application on 12th July, 2004 i.e. Monday for securing their seats. Therefore, the fault lies on the respondent State authorities in not giving intimation to the petitioners who are in service of the State Government. The respondent State authorities have all the modes of communication in their hands and they ought to have given the information to the respective offices of the petitioners by various modes of communication i.e. telephone, fax etc.. On account of the aforesaid sheer negligence on the part of the respondent State authorities the rights of the petitioners have been

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affected. They have left with no option but to seek protection of law. The petitioners have, therefore, requested for issuance of a writ of mandamus to direct the respondent State authorities to conduct counselling in such a way that without affecting the merit list of the persons who have secured higher marks than the petitioners so that the petitioners may be accommodated in the PG Courses.

5. Return has been filed on behalf of the State/respondents No.1 to 3 in which it has been mentioned that after obtaining copy of order dated 2nd July, 2004, the answering respondents immediately decided to give 5% weightage to those candidates who had already served two years in the rural areas and accordingly on 3rd July, 2004, issued an order to that effect i.e. Annexure R-1. Since fresh counselling was to be conducted, as per the Court's order, on 9th July, 2004, therefore, in order to circulate the information of fresh counselling to all the candidates, an advertisement in the form of press note was sent to all the renowned newspapers of the State of Chhattisgarh and also to Sahara Samachar, Doordarshan and Akashwani. Copies of the said press notes along with covering letter, which was sent to all renowned newspapers of the State of Chhattisgarh, Annexures R-2 to R-5 are filed. In the said press note it was specifically mentioned that those candidates who have completed two years of rural service have to submit a certificate to that effect before the Office of the Dean, Pt. Jawaharlal Nehru Medical College, Raipur, latest by 5 p.m. on 7.7.2004, fresh merit list will be prepared on that basis and will be displayed on the notice board of the Medical College on 8.7.2004 and counselling will be conducted on 9.7.2004, for this no separate intimation will be given. The said press note was published in daily newspapers i.e. Annexure R-6. It was broadcast through Akashwani, Raipur, on 3rd & 4th July, 2004, and a copy of confirmation letter to this effect is Annexure R-7. It was also flashed on Doordarshan in regional news bulletin on 4th & 5th July, 2004, and a copy of confirmation letter to this effect is Annexure R-8. In such a short time, it was not possible for the respondents to issue individual notices to all 418 candidates. It has further been mentioned that the petitioners are posted at Narayanpur, District: Bastar; Sirsida, District: Durg; Mundagaon, Bastar; and Village: Charama, District: Jagdalpur. In all the above said places every newspaper is circulated and the petitioners had appeared in the Pre-PG Examination, 2004,

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only on the basis of newspaper report. On 9th July, 2004, 307 candidates appeared out of which 152 candidates got admission including Assistant Surgeons in accordance with their merit. All the Assistant Surgeon quota seats belonging to SC, ST & OBC were filled while 13 seats belonging to unreserved category remained vacant. As such, the petitions deserve to be dismissed.

6. We have heard Mr. B.P. Sharma, counsel for the petitioners and Mr. Nawal Kishore Agrawal, Deputy Advocate General for the State/respondents No.1 to 3.

7. Mr. B.P. Sharma argued that as 13 seats are still lying vacant and the petitioners are five in number therefore, they can be given admission as against those seats.

8. Whereas, on the other hand, Mr. N.K. Agrawal argued that 13 seats which are lying vacant are of open category candidates whereas, the petitioners are SC, ST & OBC category candidates, for these categories no seat is lying vacant. As such, these candidates cannot be adjusted against open category. He further argued that for open category seat minimum qualifying marks are 50% and none of the petitioners has secured 50% marks in order to become eligible for admission against the open category quota. All the petitioners have secured less than 44%; therefore, they are not entitled for admission against the open category seats.

9. In this connection, the relevant rule is Rule 9.1 of the Pre-PG Examination Rules, 2004. This Rule, which deals with the preparation of merit list and waiting list, envisages that "as per the decision of Supreme Court of India minimum qualifying marks in the Pre-PG Examination are 40% for candidates of reserved category (SC, ST, OBC) and 50% for candidates of unreserved category". Therefore, in view of the above rule, we are of the view that the contention of the learned counsel for the petitioners is of no avail to the petitioners. It is settled law that no candidate can be admitted to the PG courses unless he has secured 50% marks in case of unreserved category and 40% marks in case of reserved category. It is an admitted position that the petitioners have not secured 50% marks which is the minimum eligibility criteria for admission. Therefore, the petitioners cannot be given admission against the 13 seats lying vacant.

10. Mr. B.P. Sharma, while referring Rule 10.14 of the Pre-PG Examination Rules, 2004, argued that this rule provides that in case eligible candidates to the

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extent of reservation in any reserved category are not available the vacant seats shall be filled by converting them into other category i.e. ST category seats can be converted into SC category seats, SC category seats can be converted into ST category seats, if candidates of both the categories are not available then the vacant seats can be filled from OBC category candidates, and if the candidates are not available from the above three reserved categories, the vacant seats can then be filled from unreserved categories. Therefore, vice-versa, 13 seats, which are vacant from the general category, can also be filled by accommodating the petitioners. Learned counsel for the petitioners further submitted that if these seats are not filled by accommodating the petitioners, then these seats will go in waste and the teachers and infrastructure for which public money is spent will remain in position without their utilization. Therefore, in order to avoid the wastage of public money and looking to the shortage of the doctors in the State, the petitioners can be given admission against the general category vacant seats.

11. But, we are of the considered opinion that the above argument advanced by the learned counsel for the petitioners is without any substance for the reason that for giving admission against the vacant seats of general category, candidate must have secured 50% minimum marks in order to become eligible. Rule 10.14 envisages that the vacant seats can be filled up by eligible candidates by converting them form one category to the other category. As the petitioners have secured between 40% to 44% marks, therefore, they are not eligible for admission against the general category quota. It is settled law that relaxation in the minimum marks i.e. 50% marks cannot be granted in any case because, it affects the standard of education. The second reason is that if the petitioners who have secured only 40% to 44% marks are given admission against the general category seats then, there are candidates of general category available who have secured more marks than the petitioners, therefore, ignoring their claim the petitioners cannot be given preference for the vacant seats. Moreover, as informed by the learned Deputy Advocate General, out of these 13 seats, four seats are vacant against the session 2004-2005 and remaining 9 seats are vacant against the sessions 2005-2006 and 2006-2007. As far as 2005-2006 and 2006-2007 sessions are concerned, it was informed during the course of the arguments that even among general category candidates some waiting list of

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eligible candidates who have opted for other subjects is there, therefore, before the session will start those candidates may also opt for these vacant seats. Apart from that, perusal of the above rule makes it clear that only those candidates of general category who have secured 50% marks can be given admission by converting the reserved category seats, because the opening word of the rule makes it clear that only the **eligible candidates** can be given admission. In other words, the general category candidates who have not secured 50% marks cannot be given admission against the reserved category seats for which 40% marks are prescribed by converting the reserved category seats into general category seats. Similarly, the reserved category students who have secured less than 50% marks cannot be given admission against the general category seats for which the minimum pass marks are 50%. Therefore, the petitioners who have not secured 50% marks cannot be given admission against the general category seats.

12. Mr. B.P. Sharma further argued that in the first list, the petitioners could not secure position in the merit and they were not aware about the order dated 2.7.2004 of this Court, whereby the Court ordered for giving 5% weightage to those candidates who had served two years in the rural areas. Later on, when the Government decided to give weightage of 10 additional marks to the petitioners, thereby, their name appeared in the merit list after adding 10 marks but, about that they were not aware, therefore, the respondents ought to have sent letters by post about the date of counselling 9.7.2004 and no such letter as envisaged in Rule 1.2.2 of the Rules, 2004, was issued, as such, the petitioners are entitled for re-counselling.

13. But, again we are of the opinion that looking to the circumstances in which the counselling of 9.7.2004 was conducted, the ground taken by the petitioners is not justified for the reason that before starting of the first counselling few candidates filed writ petitions and by order dated 2.7.2004 this Court ordered that 5% weightage should be given to those candidates who had served for two years in the rural areas before the commencement of the examination. Proceedings of that matter were regularly appearing in almost all the newspapers. Looking to the time schedule fixed by the Medical Council of India for commencement of courses in compliance of the judgment of the Hon'ble Apex Court in the matter of **Medical Council of India vs. Madhu Singh and**

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others reported in **(2002) 7 Supreme Court Cases 258**, this Court vide order dated 2.7.2004 ordered that after giving additional weightage of 5% marks to the candidates who have served for two years in the rural areas, the respondents should conduct counselling on 9th July, 2004 by seeking choice of the subject and session from those candidates. Therefore, in the given situation, a very short time i.e. six days was given to the respondents to conduct counselling that too after giving weightage of 5% marks. Hence, in such a short time it was not possible for the respondents to send call letters by post, which has been mentioned, by the respondents in their return. However, looking to the shortage of time, the respondents adopted a workable procedure. First of all on 3rd of July, 2004, they issued order for giving weightage of 10 marks to those candidates who had served for two years in the rural areas and then published a press note on 4.7.2004 in various widely circulated newspapers i.e. Nav Bharat, Deshbandhu, Dainik Haribhoomi and Dainik Bhaskar to the effect that all those candidates who had appeared in Pre-PG Examination 2004 are hereby informed that before appearing in the pre-PG examination, if they had served for two years in the rural areas, then they should first obtain a certificate to that effect from the Director, Health Services, Chhattisgarh and submit the same latest by 5 p.m. on 7.7.2004. It was further made clear that merit list after giving weightage of 10 marks will be prepared and published on 8.7.2004 by 3 p.m. on the notice board of the Pt. Jawaharlal Nehru Memorial Medical College, Raipur, the counselling will be conducted on 9.7.2004, and **no separate notice will be given for counselling**. This press note was published in the above newspapers, which are widely circulated in the State of Chhattisgarh. Not only this, the details of the said press note was broadcast in Aakashvani through their regional news bulletin dated 4th & 5th July, 2004 and it was also telecasted on Television in the State news dated 4th & 5th July, 2004, which has not been denied by the learned counsel for the petitioners. Therefore, wide publicity was given to the said press note. The above fact has been mentioned by the respondents in their return, which has not been denied by the petitioners by filing rejoinder. The petitioners in their petitions have mentioned that they are not properly connected with print media, but they have not controverted the point raised by the respondents that the newspapers in which the press note was released viz., Nav Bharat, Deshbandhu, Dainik Haribhoomi & Dainik Bhaskar are

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not being received at their place of work and they are not reading any news paper among the above papers. Further, they have not stated on affidavit that radio & Television facilities are not available at their place of posting and they are not hearing radio and watching Television, therefore, there was no possibility of coming to know about the above press note through broadcasting or telecasting. In the circumstances, now the petitioners cannot claim that the said news did not come to their knowledge.

14. As far as the question of application of Rule 1.2.2 of the Rules, 2004, is concerned, this rule was applicable in the ordinary course. But in this case, the counselling on 9.7.2004 was conducted in compliance of this Court's order dated 2.7.2004 and very short time i.e. six days was left, therefore, the respondents in their wisdom published in various newspapers which have wide circulation, informed all the candidates to submit their certificates and see the merit list on the notice board of the Medical College on 8.7.2004 and to appear for counselling on 9.7.2004. Therefore, in the peculiar facts and circumstances, the petitioners cannot press into service Rule 1.2.2 of the Rules, 2004. The petitioners are working in the dispensaries out of which Village: Charama and Bastar are on the national highway and even in the other towns where the petitioners' dispensaries exist these newspapers are regularly circulated and further that this news was telecasted/broadcasted on TV & radio also. Therefore, in the circumstances, we are of the considered opinion that the petitioners cannot claim that the respondents had not followed the just and fair procedure of informing the petitioners about the counselling date. It is not out of place to mention here that even the petitioners had applied for appearing in the pre-PG examination based only on the news published in these newspapers. Therefore, now they cannot take the stand that the press note published by the respondents for counselling, could not be noticed by them. As such, the ground taken by the petitioners is without force.

15. Even otherwise, in the alternative, worst to worst, if the request of the petitioners is accepted and the respondents are directed to conduct counselling only after sending call letters to those candidates whose name appears in the merit list, even then the petitioners will not be able to get admission for the reason that in the merit list at least there are 10 candidates above petitioner Dr. M.K. Suryavanshi; 22 candidates above petitioner Dr. Ganesh K. Das. There

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are more than these candidates above in the merit list from the other petitioners who had not appeared in counselling, but they have not approached this Court by filing writ petition, if the call letters are sent to all those candidates and if they appear for counselling then the petitioners will not get any chance to get admission. Therefore, on this ground also, the relief sought by the petitioners cannot be granted to them.

16. As mentioned above, the session has already been delayed by two months and as per the directions of the Hon'ble Apex Court in the matter of **Medical Council of India (supra)** and the circular issued by the Medical Council of India, mid term admissions cannot be granted. Therefore, even if now a direction is given to the respondents to conduct fresh counselling there will be another delay of at least two weeks and thereby the admissions will be delayed by three months, which is not permissible in view of Madhu Singh's case and the circular issued by the Medical Council of India. Therefore, on this ground also the relief sought by the petitioners cannot be granted.

17. In view of the foregoing reasons, we are of the considered opinion that the relief sought by the petitioners in these writ petitions cannot be granted. The writ petitions are therefore, liable to be dismissed and they are hereby dismissed.

Sd/-
Chief Justice

Sd/-
L.C.BHADOO
Judge

Soma